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Washington, D.C. 20006

May 2, 2005

Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Amendment of Parts 1, 21, 73, 74 and 101 of
the

Commission's Rules to Facilitate the
Provision of
Fixed and Mobile Broadband Access,
Education and other Advanced Services in the
2150-2162 and 2500-2690 MHz Bands, WT
Docket No. 03-66

Notice of Ex Parte Presentation

Dear Ms. Dortch:

Clearwire Corporation ("Clearwire") is filing this ex parte filing to join with Sprint Corporation in its concern that the Coalition's multichannel video programming distributors ("MVPD") opt-out proposal "could unintentionally result in unanticipated numbers of opt-outs across the U.S., including large markets, which could have disruptive impacts to adjacent markets and service deployments." Sprint Consolidated Reply to Oppositions to Petitions for Reconsideration, WT Docket 03-66 (filed on March 9, 2004) ("Sprint Reply").

As both a licensee of BRS spectrum and a lessor of both BRS and EBS spectrum, Clearwire has been an active participant in this proceeding. Using this spectrum, Clearwire has successfully launched broadband systems in number of markets¹ and plans to continue to aggressively roll out its services. It is imperative to Clearwire's continued success that the Commission adopt rules that protect and encourage the use of the 2.5 GHz band for broadband use. Of utmost importance to Clearwire is that its broadband deployment not be disabled by continued use of this band for antiquated services providing minimal benefit to small numbers of the public.

¹ To that end, Clearwire has deployed systems in Jacksonville and Daytona Beach, Florida, Abilene, Texas and St. Cloud, Minnesota.

To that end, Clearwire wholeheartedly supports Sprint's statement that "the benefits of flexibility that flow from an opt-out capability can become counter-productive in situations where exercise of the option prevents a preponderance of other in-market licensees and/or lessees who are not included in the robust MVPD system from transitioning or has the spill-over effect of preventing adjacent or nearby markets from transitioning altogether." Sprint Reply at 3. As the Commission stated when it rejected the automatic opt-out provision in favor of case-by-case waivers: "[w]e are particularly concerned, moreover, that the adoption of a blanket "opt-out" for high-powered MVPD licensees may result in interference to licensees in neighboring population centers, which would prevent these neighboring locales from receiving wireless broadband services under the rules adopted today." Report and Order at Paragraph 76.

The opt-out provision was adopted as a narrow exception to permit the small numbers of actual providers of wireless cable services to continue to operate in a two-way environment under limited circumstances. It was to protect consumers and business that were providing viable wireless cable services for a short duration until alternatives were developed. Most of the well established providers in the 2.5 GHz band have the notice and resources to meet the Commission's rules in most instances. To the extent that this continues to be the purpose behind the opt-out provision, Clearwire accepts it. But to the extent that the opt-out provision may be used to permit entities to hold up two-way deployment, Clearwire must oppose any expansion of the opt-out provisions, and must support Sprint in its request that the Commission permit opt-outs only on a case-by-case waiver basis, thus ensuring that the use of the opt-out provision be minimized and advancing the Commission's desire to "make significant progress towards the goal of providing all Americans with access to ubiquitous wireless broadband connections, regardless of their location." R&O at paragraph 1.

Thus, Clearwire must oppose any requests to expand the opt-out provisions. Specifically, Clearwire opposes BellSouth's proposal to permit to permit licensees that initially opt-out of a transition, and thus, delay that market's transition to the new band plan and deployment of broadband in that market, to then go ahead and initiate a transition or self-transition later on. Consolidated Reply to Oppositions to Petitions for Reconsideration of BellSouth Corporation, et. al., WT Docket 03-66 (filed March 9, 2005). This is patently unfair and unreasonable. By permitting an entity to opt-out when the first potential proponent comes forward, that entity can put an end to that potential proponent's plans to transition the market and would prevent deployment of broadband in that market, but then transition the market on its terms and time frame.

Clearwire is currently designing and deploying its broadband two-way system within the confines of the existing bandplan. However, such deployment will be halted if large numbers of EBS and BRS licenses in the 2.5 GHz band opt-out. In fact, in deciding to allow opt-out only on a case by case basis, the Commission stated that it was “particularly concerned, moreover, that the adoption of a blanket ‘opt-out’ for high-powered MVPD licensees may result in interference to licensees in neighboring population centers, which would prevent these neighboring locales from receiving wireless broadband services under the rules...” R&O at paragraph 76. For example, if Clearwire holds licenses and leases that give it access to eight channels of BRS and/or EBS spectrum in a market, and a second entity in that same market holds the rights to all of the remaining spectrum in the market and that entity opts-out of the transition, Clearwire will be left with eight channels that it may very well be unable to use due to interference from the high-powered operations. Clearwire will also suffer from interference caused by licensees which opt-out in adjacent markets, severely limiting our ability to deploy useful service in our own geographic service area.. Such scenarios would be antithetical to the adoption of the new rules, contrary to the Commission’s broadband policy and would stall Clearwire’s plans for significant broadband deployment.

The Commission’s rules otherwise permit high-powered operations to continue as long as they relocate to the MBS. Clearwire would be willing to swap the MBS spectrum which it has the rights to, through license or lease, for LBS and UBS spectrum, so that such uses may continue without frustrating broadband deployment.

Pursuant to Section 1.1206(b)(2) of the Commission’s Rules, this presentation is being filed electronically. Should any questions arise concerning this matter, kindly contact the undersigned.

Sincerely,

/s/ R. Gerard Salemmme

R. Gerard Salemmme
Nadja S. Sodos-Wallace